



Sales Tax DOR Directive 93-7

Massachusetts
Department of
Revenue

GOVERNMENT DOCUMENTS
COLLECTION

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Exempt Sales of Copying Machines and Related Items

Issue:

When are retail sales of copying machines, related supplies, photocopies and service contracts exempt from sales tax?

Directive:

Copying Machines

Retail sales of copying machines are subject to sales tax unless the copier is used directly and exclusively in an industrial plant in the actual manufacture of tangible personal property to be sold. See G.L. c. 64H, § 6(s).

Supplies

The retail sale of copying machine supplies such as paper, toner and ink are exempt if the photocopies produced from these ingredient or component materials will be sold. See G.L. c. 64H, § 6(r). Retail sales of supplies that do not become an ingredient or component part of tangible personal property to be sold are exempt only if they are consumed and used directly and exclusively in an industrial plant in the actual manufacture of tangible personal property to be sold. See G.L. c. 64H, § 6(s).

Photocopies

Retail sales of photocopies are subject to sales tax.

Service Contracts

Generally, when the sales price of a service contract is separately stated from the sales price of the equipment and the purchase of the contract is optional, the purchase of the service contract is not subject to sales tax. The cost of a mandatory service contract which the buyer must purchase as part of the sale of the copying machine is included in the taxable sale price of the machine. See 830 CMR 64H.1.1(5)(g), for information regarding taxation of service contracts and replacement parts.

Sales to Exempt Purchasers

Retail sales of tangible personal property, including copying machines, supplies and photocopies to government agencies or under certain circumstances to tax exempt organizations qualified under § 501(c)(3) of the Internal Revenue Code, are exempt from tax under G.L. c. 64H, § 6(d) and § 6(e) respectively.

Discussion of Law:

General Laws Chapter 64H, § 2, imposes a tax upon retail sales in the commonwealth by any vendor of tangible personal property or telecommunications services unless specifically exempt. The definition of "sales" includes leases and rentals. G.L. c. 64H, § 1. However, the sale of any item of tangible personal property may be exempt if it is sold for an exempt use or if it is sold to an exempt purchaser.

1. Exempt Use

a. Copying Machines

General Laws Chapter 64H, § 6(s) exempts from taxation sales of machinery, and its replacement parts, used directly and exclusively in an industrial plant in the actual manufacture of tangible personal property to be sold. Machinery is "used directly and exclusively" in the manufacture of tangible personal property to be sold only where it is used solely during a manufacturing operation to cause a direct and immediate physical change upon such property. *Id.*

An industrial plant is a factory at a fixed location primarily engaged in the manufacture, conversion or processing of tangible personal property to be sold in the regular course of business.

b. Supplies

General Laws Chapter 64H, § 6(r), exempts from taxation sales of materials, tools and fuel, or their substitutes, which become an ingredient or component part of tangible personal property to be sold. Materials, tools and fuel which do not become an ingredient or component part of tangible personal property to be sold may be exempt if they are consumed and used directly and exclusively in an industrial plant in the actual manufacture of tangible personal property to be sold. *Id.* A material, tool or fuel is "consumed and used directly and exclusively in an industrial plant in the actual manufacture of tangible personal property to be sold" only if its normal useful life is less than one year, or if its cost is allowable as an ordinary and necessary business expense for federal income tax purposes. *Id.*

2. Exempt Purchaser

General Laws Chapter 64H, § 6(d), exempts from sales tax sales to the United States, the commonwealth, or their respective agencies.

Sales to organizations exempt from taxation pursuant to section 501(c)(3) of the Internal Revenue Code ("tax exempt"), are exempt from sales tax provided that the tangible personal property sold is used in the conduct of the organization's exempt enterprise, and the organization obtains a certificate from the Commissioner of Revenue stating it is entitled to the exemption, and the vendor keeps a proper record of the sale. See G.L. c. 64H, § 6(e).

Examples:

1. A company operating a photoprocessing business at a fixed location purchases a copying machine. The company's primary activity is the manufacturing of photographic images to be sold in the regular course of the company's business. The copying machine is used solely to cause a direct and immediate physical change upon the property to be sold during photoprocess-

ing operations. The company also purchases supplies for the copying machine.

The company's premises qualifies as a "factory" since the primary activity there consists of using mechanical power in photo-processing manufacturing operations. See Letter Rulings 85-40 and 89-7, and Directive 88-9. The company's premises qualifies as an "industrial plant" because it consists of a factory at a fixed location used primarily for the manufacture of tangible personal property to be sold in the regular course of the company's business.

The sale of the copying machine is exempt from tax since the machine is used directly and exclusively in an industrial plant in the actual manufacture of tangible personal property to be sold. The sales of supplies used in this machine are exempt if the supplies become an ingredient or component part of tangible personal property to be sold. Supplies that do not become an ingredient or component part of the tangible personal property sold are exempt only if they are consumed and used directly and exclusively in the industrial plant in the actual manufacture of tangible personal property to be sold. Sales of the photocopies are generally taxable.

2. Copying machines are leased for use by various "tax exempt" organizations that qualify for exemption under G.L. c. 64H, § 6(e) as discussed above and government entities, such as public universities and public libraries. These organizations and entities also purchase supplies for the copying machines, and make the copying machines available to the general public.

Leases of the copying machines and sales of supplies to qualified "tax exempt" organizations are exempt from taxation. Leases of the copying machines and sales of supplies to the federal government and its agencies, and to the commonwealth and its agencies, are exempt from taxation.

Sales of tangible personal property by such "tax exempt" organizations and government agencies, however, are generally taxable. Thus, sales of photocopies by these institutions are generally subject to tax. See G.L. c. 64H, § 1, (definition of "retailer"); see also DOR Directive 91-1 and Letter Ruling 92-3.

Conclusion:

Depending on the facts of each transaction, retail sales of copying machines, although generally taxable, may be exempt from taxation pursuant to G.L. c. 64H, § 6(d), § 6(e) or § 6(s). Sales of copying machine supplies, also generally taxable, may be exempt from taxation pursuant to G.L. c. 64H, § 6(d), § 6(e), § 6(r), or § 6(s). Generally, sales of photocopies are subject to tax.

Exempt Usage

When claiming an exemption based on use pursuant to G.L. c. 64H, § 6(r) or § 6(s), a properly completed Form ST-12 certifying that the property is being purchased for an exempt use must be presented by the purchaser to the vendor. See 830 CMR 64H.8.1(5).

Exempt Purchaser

When claiming an exemption as an exempt purchaser pursuant to G.L. c. 64H, § 6(d) or § 6(e), a properly completed Form ST-5 with an ST-2 copy (required for tax exempt organizations only) certifying that the purchaser is exempt must be presented by the purchaser to the vendor. See 830 CMR 64H.8.1(5). If a government entity claims the exemption but does not offer an Exempt Purchaser Certificate, the vendor, to sell tax free, must obtain adequate documentation, generally, a copy of the government check, verifying that the purchaser is a government entity.



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